

Planning Board Meeting, February 2, 2005: Summary of DCPC discussion

1. The Planning Board provided the following information to clarify the DCPC nomination process as it moves forward:

- It should be understood that any document released by the Board that is labeled "Draft" means that it is an unfinished document and that further changes can be expected to be made by the Board.
- The DCPC Draft #4 was released by the Board to solicit comments and input. The Board set a time frame of December 20, 2004 through January 20, 2005 for submitting comments on Draft #4, with the understanding that the Board would review the submitted comments at its Tuesday, January 25, 2005 board meeting.
- The January 25, 2005 board meeting was canceled due to weather conditions and the DCPC discussion item was re-scheduled to the Wednesday, February 2, 2005 board meeting.
- At its February 2, 2005 meeting, the Planning Board reviewed and summarized the 21 comment letters received on DCPC Draft #4. The Board appreciates and thanks all who took the time to provide their input.
- The Board noted that members Beverly Kane and Lee Gurney, along with Town Planner Tom Fudala, attended a meeting with Cape Cod Commission staff on January 19, 2005. The Commission staff commented on Draft #4, provided direction and guidance, and clarified confusion that existed regarding the meaning of some items on the nomination form. We reached the conclusion that additional work needs to be done; namely, to provide specific responses to the items on the nomination form focusing on our designated issues of growth management, water resources, and traffic.
- About 10 people were in attendance for the DCPC discussion and several offered additional comments and input.

2. The following are the next steps in the preparation of the DCPC nomination:

- The Board will now begin working on preparing another draft which will be labeled Draft #5. The Board will issue Draft #5 for comments/input as soon as the Board completes its update.
- When the Planning Board has finalized the DCPC nomination form, and has gathered all supporting documentation including copies of local by-laws, zoning by-laws, Board of Health regulations, Conservation Commission regulations, maps, reference materials, etc., the Board is then required to meet with the Cape Cod Commission staff for their review. When the Cape Cod Commission staff advises the Planning Board that the nomination form and attachments are in order, the Planning Board will schedule a full Public Hearing.
- Following the Public Hearing, the Board will make a final determination as to whether any further changes should be made to the DCPC nomination based on input received at the Public Hearing.
- The Planning Board will then formally submit the DCPC nomination to the Cape Cod Commission.

Planning Board notes:

Upon receipt of the nomination, the Cape Cod Commission then publishes a notice that it has received the DCPC nomination form. It is on that date that the first short-term moratorium period begins, and all local agency permitting authority within the nominated area is then suspended FOR UP TO 45 DAYS.

The only exemptions from this short-term moratorium period of up to 45 days are those developments that are totally exempt from the provisions of the Cape Cod Commission Act, as identified in Section 22 of the Act. The relevant paragraphs of Section 22 of the Act are described below:

Section 22 (b): This act shall not apply to any development which prior to July first, nineteen hundred and eighty-nine has received any one of the following:

an order of conditions under section forty of chapter one hundred thirty-one of the General Laws,

a special permit or variance under chapter forty A

(Planning Board note: projects included under this exemption include Southport, New Seabury, Quashnet Valley, Windchime Point, and the portion of Mashpee Commons that was permitted in 1986 (Steeple Street area)

a comprehensive permit under chapter forty B

or a statement of the secretary of environmental affairs that the environmental impact report adequately complies with sections sixty-two to sixty-two H, inclusive, of chapter thirty, and which development is constructed or is thereafter constructed in substantial compliance therewith.

Section 22 (c): The provisions of this act shall not apply to the grant of a development permit by a municipality or state agency for:

the repair, upgrade, change, alteration or extension of a single family dwelling or an accessory structure, septic system or water well relative thereto, if such dwelling existed prior to July first, nineteen hundred and eighty-nine, unless such upgrade, change, alteration or extension is greater than twenty-five percent of the floor area of the dwelling.

Section 22 (e): This act shall not apply to:

a lot or lots shown on a subdivision plan endorsed by a planning board prior to July first, nineteen hundred and eighty-nine, in accordance with section eighty-one V of chapter forty-one of the General Laws, if the planning board has released the security held by it to ensure completion of construction of ways and the installation of municipal services, as required by section eighty-one U of said chapter forty-one, prior to the effective date of this act.

In addition, the County's DCPC regulations, (Chapter E, Ordinance 90-15, as amended) specify that Certificates of Occupancy for which all other municipal permits have been received may be issued during this first moratorium period.

During this first short-term moratorium time frame (up to 45 days,) the Cape Cod Commission reviews the proposed nominated area and the reasons for its nomination. After this review, the Commission must either reject the nomination, or accept it and proceed with a full public review.

- If the Commission rejects the nomination request, the DCPC is ended, and local permit granting authority is restored.

- If the Commission agrees to accept the nomination request, it is on that date that the short-term moratorium period comes to an end, and the second moratorium period begins. The second moratorium period continues in effect until the implementing regulations are adopted by town meeting vote.
- During the second moratorium period, local permitting authority continues to be suspended,

EXCEPT THAT THE TOWN CAN SPECIFY ON ITS NOMINATION FORM (UNDER ITEM #14) A LISTING OF DEVELOPMENT IT WISHES TO BE EXEMPTED DURING THIS SECOND MORATORIUM PERIOD.

Please note that the following developments are exempted from the Cape Cod Commission Act and therefore are exempted the second moratorium period.

Cape Cod Commission Act Section 22 (b) : *This act shall not apply to any development which prior to July first, nineteen hundred and eighty-nine has received any one of the following:*

an order of conditions under section forty of chapter one hundred thirty-one of the General Laws,
a special permit or variance under chapter forty A

(Planning Board note: projects included under this exemption include Southport, New Seabury, Quashnet Valley, Windchime Point, and the portion of Mashpee Commons that was permitted in 1986, Steeple Street area)

a comprehensive permit under chapter forty B

or a statement of the secretary of environmental affairs that the environmental impact report adequately complies with sections sixty-two to sixty-two H, inclusive, of chapter thirty, and which development is constructed or is thereafter constructed in substantial compliance therewith.

Cape Cod Commission Act Section 22 (c): *The provisions of this act shall not apply to the grant of a development permit by a municipality or state agency for:*

the repair, upgrade, change, alteration or extension of a single family dwelling or an accessory structure, septic system or water well relative thereto, if such dwelling existed prior to July first, nineteen hundred and eighty-nine, unless such upgrade, change, alteration or extension is greater than twenty-five percent of the floor area of the dwelling.

Cape Cod Commission Act Section 22 (e): *This act shall not apply to:*

a lot or lots shown on a subdivision plan endorsed by a planning board prior to July first, nineteen hundred and eighty-nine, in accordance with section eighty-one V of chapter forty-one of the General Laws, if the planning board has released the security held by it to ensure completion of construction of ways and the installation of municipal services, as required by section eighty-one U of said chapter forty-one, prior to the effective date of this act.

In addition, the *County's DCPC regulations, (Chapter E, Ordinance 90-15, as amended) specify that Certificates of Use and Occupancy for which all other municipal permits have been received may be issued.*

Cape Cod Commission Act, Section 11(h): Where an applicant demonstrates a taking under Section 11(h)* of the Cape Cod Commission Act and where approval would not result in a reasonably foreseeable danger to the public health or safety.

(*Notwithstanding the provisions of this section, the (Cape Cod) Commission shall permit a municipality to grant a development permit for a development in a district of critical planning concern or in an area which has been nominated and accepted for consideration for designation as a district of critical planning concern where an applicant demonstrates that to deny the development permit would constitute a taking of property in violation of the Massachusetts and United States Constitution; provided, however, that no reasonably foreseeable danger to the public health or safety will arise from such approval or approval with conditions.)

Cape Cod Commission Section 11(C): a municipality may grant development permits if:

Section C (2) a development has received approval as a development of regional impact within the seven year period next preceding the nomination of the geographic area in which said development is located, in whole or in part, and such approval is still valid, or

Section C (3) a development of regional impact has been referred to the commission for review prior to the first published notice of the nomination of a district of critical planning concern in which said development is located, in whole or in part, and subsequently is approved; or

Section C (4): a development is authorized by a development agreement which has been approved by the commission and the relevant municipality or municipalities; or

Section C (5): the commission has not expressly found in accepting a nomination that the issuance of development permits for a single-family house or houses on lots held in common ownership or on lots in separate ownership may be substantially detrimental to the protection of the public health, safety and welfare.....

Cape Cod Commission Act Section 23: The commission shall have the power after holding a public hearing pursuant to section five to grant an exemption, in whole or in part and with appropriate conditions, to any applicant from the terms and provisions of this act where the commission specifically finds that a literal enforcement of the provisions of the act would involve substantial hardship, financial or otherwise, to the applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of the act.

Cape Cod Commission Act Section 24 (a): When a municipality or state agency makes a determination that an emergency exists and that a development is necessary for the immediate protection of the health or safety of the public, the municipality or state agency may issue a development permit to conduct such emergency work notwithstanding that ordinarily such work would require a referral to the commission as a development of regional impact.

Under the Cape Cod Commission Act, Section 11(c)1, the Town may specify classes and types of proposed development that it determines should be exempt from the second moratorium period. The response needed under Item #14's is to list the Town's proposed exemptions.

The following is the Board's response to Item #14's question. It has not yet been finalized by the Board and is subject to further review and possible changes.

Nomination Form, Item #14:

What classes or types of proposed development should be allowed to continue during the consideration of the nomination because they will not be substantially detrimental to the area and the public health, safety, and general welfare, and will not compromise the purposes of the Act?

1. The construction of single family homes, unless the Commission specifically finds that they may not proceed.
 2. Repair and maintenance of existing structures, e.g., replacement of exterior shingles, re-roofing, interior renovations (without increase in gross floor area), replacement of in-kind doors, windows, etc., and replacement in the same footprint of existing decks, without enclosure or increase in square footage.
 3. Upgrades, changes, alterations, or extensions of a single family dwelling or an accessory structure, septic system or water well relative thereto.
 4. Emergency repairs to septic systems or upgrades that comply with Title 5 regulations, and that do not conflict with the purposes of the DCPC nomination.
 5. Emergency repairs may be allowed on existing docks or piers at the discretion of the Conservation Commission. No new docks or piers may be constructed.
 6. Non-construction projects determined by the Mashpee Conservation Commission to have no vegetative environmental impacts on the area, e.g., vista pruning, limited removal of vegetation, etc. This does not include any new earth removal operation or any expansion of any existing operation.
 7. Development projects by non-profit entities.
 8. Accessory apartments allowed under Mashpee Zoning By-Law 174-45.4.
 9. Expansion of existing non-residential structures by less than 5,000 sq. feet, provided that such expansion would not result in more than 100 additional vehicle trips per day on an annual average basis (AADT).
 10. Modifications of previously-approved subdivisions which do not increase the number of building lots.
 11. Modifications of previously-approved special permits which do not increase the number of residential units, do not increase non-residential square footage (except as provided by "14" above, and except for non-habitable accessory or utility structures,) and which are not, in the opinion of the Mashpee Planning Board, substantially detrimental to the area and to the public health, safety, and general welfare and will not compromise the purposes of the Cape Cod Commission Act or of this DCPC nomination.
 12. Subdivision roadway design plans and modification plans which, in the opinion of the Mashpee Planning Board, will not compromise the purposes of this DCPC nomination.
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As noted previously, the Planning Board is currently working on the DCPC Nomination Proposal Draft #5. Draft #5 will be issued for comment/input and placed on this website as soon as the Board is ready to do so.

In the meantime, The Board will continue to accept all comments and input throughout the process, including those addressed to the Board, care of the Planning Department, at townplanner@ci.mashpee.ma.us or by mail to: Planning Board, 16 Great Neck Rd. North, Mashpee, Ma. 02649.

The Planning Board will continue to provide updates on the DCPC process at:
www.ci.mashpee.ma.us click on town departments, then click on planning, then click on dcpc.